

U.S. West also submits that it is not in the public interest to take away the grandfathered discounts and force them onto other cellular providers; that such a windfall to CRA's members would not benefit the end-user customers.

On May 25, 1990, U.S. West filed a motion to strike portions of CRA's reply brief dealing with sanctions on the grounds that CRA asserts without citation illegal discounts to up to 30% of U.S. West's customer base; that CRA has alleged violations of the Commission's Cease and Desist Order without providing any substantiation for the charges. U.S. West asks that the declaration of the CRA President be stricken in that it relates to damages assertedly suffered and has no factual support. Finally, U.S. West asks that CRA's alternative to a fine, the proposal to order U.S. West to reduce its wholesale rates for a three-year period, be stricken as improper briefing.

On June 11, 1990, CRA filed its opposition to U.S. West's motion to strike. Therein CRA cites a December 19, 1990 U.S. West's supplied figure of 31% of customer base as foundation for its reply brief allegation. It points to the April 18, 1990 Schena's memorandum as bearing on Cease and Desist violations. CRA defends inclusion of its President's declaration of harm to its members as being responsive to Finding 4 of the Cease and Desist Order and asserts it is also responsive to staff's opening brief suggesting CRA recover intervenor fees, who further noting that the Commission relied upon like information in resolving the BACTC-SJREB case. Finally, it refers to staff's brief where staff recommended consideration of a discount rebate to CRA's members as an appropriate sanction.

We do not consider the recommendation staff included in its brief that CRA be permitted to recover expenses in this proceeding. PU Code § 1804 requires timely filing of requests for finding of eligibility for compensation. No such filing was made by CRA, obviating need for any further consideration on eligibility or the merits of an award.

In view of our determinations in this proceeding we do not find it necessary to rule on U.S. West's May 25, 1990 motion to strike portions of CRA's brief.

Discussion

The fundamental problem facing the Commission in this investigation lies in the ambiguity between the language of U.S. West's tariff reflected in Advice Letter 8-A as it pertains to qualification for multiple unit rates, and the far more restrictive perception of what that language intended, as was represented to and understood by the Commission when the Commission issued Resolution T-13052 authorizing the Advice Letter. In short, the Commission's Resolution was ambiguous and did not do what it was specifically intended to do.

It is U.S. West's position that its actions in offering multiple unit discounts to members of the BIA have been in full and strict legal compliance with the terms of its filed tariff as reflected by Advice Letter 8-A authorized by the Commission. In Advice Letter 8-A, U.S. West submitted three tariff sheets to revise earlier filed sheets. Two of these, Revised Cal. P.U.C. Sheets Nos. 151-T and 152-T, pertained to Retail Rates. Filed November 7, 1988, they were authorized by Resolution T-13052 to become effective March 8, 1989.

Part (b) of these Advice Letter 8-A revision sheets containing a section entitled "Services to Multiple Units," is applicable herein. Part (b) provides for reduced multiple unit rates when "Employees, officers, contract agents and members ('Eligible Person')" of any corporation or other legal entity "are engaged on a for-profit basis in the entity's main line of business."¹¹ (There are other requirements not at issue here.) But it must be noted that the requirement is that the member be

¹¹ Advice Letter 8-A, Revised Cal. P.U.C. Sheets Nos. 151-T and 152-T relative to Services to Multiple Units, is reproduced herein as Appendix A.

engaged on a for-profit basis - there is no tariff stated requirement that the member's association or organization also be on a for-profit basis.

The present investigation was initiated based upon a complaint from CRA that U.S. West was violating both its multiple unit discount tariff as well as Resolution T-13052 by offering its multiple unit tariff to members of a non-profit affinity group, the BIA. The association members on a for-profit basis are in construction and land development. Their non-profit association's main activity is the promotion of construction and land development. The Advice Letter 8-A Revision Sheets, taken alone, permit discounts to for-profit members engaged in the main line of business of their association, even though that association is a non-profit entity. Therefore, U.S. West was not in violation of its tariff in offering these discounts unless Resolution T-13052, the Commission's decisional instrument authorizing the Advice Letter, in some manner added limiting language or changed the scope of the Advice Letter.

Without doubt there were clear statements in the Resolution setting forth the Commission's intent and understanding that the Advice Letter did not authorize multiple unit discounts to be made available to members of affinity groups like AAA, neighborhood associations, senior citizen groups, and similar community organizations. These statements clearly indicated that offerings would be "confined to for-profit entities, and to persons directly involved in the business of the entity," and also that the entity must be one "legally organized for profit-making purposes."

But at that point we fatally erred in drafting the Resolution. All these clear statements of intent, understanding, and limitation appear in the Background and Discussion portions of the Resolution; none was carried over into the Findings and Order

of the Resolution.¹² The order mentions none of the limitations; it merely authorizes the Advice Letter as submitted, and dismisses the protests.

Therefore, despite our intentions, all that Resolution T-13052 accomplished legally, apart from dismissal of the Mission Bell and CRA protests without prejudice, was to authorize Advice Letter 8-A to become effective on March 8, 1989.

Having concluded previously herein that U.S. West did not violate its tariff in offering multiple unit discounts to members of the BIA, and as the legal effect of Resolution T-13052 did not in any way change or limit that tariff as reflected by the Advice Letter approved, it follows that U.S. West cannot have violated Resolution T-13052. Accordingly, without violations of either its tariff or the Resolution, there is no basis for a cancellation, revocation, or suspension of U.S. West's operating authority, or for a fine to be imposed in that regard.

But this investigation cannot end there. Remaining for consideration is the fact that U.S. West, after filing Advice Letter 8 on November 3, 1988, and superseding it on November 18, 1988 with Advice Letter 8-A, in response to protests, had its attorney write to staff on December 19, 1988 and misrepresent the way the multiple unit discounts applied. As germane here, counsel stated:

¹² The ordering paragraph of Resolution T-13052 merely states as follows:

"IT IS ORDERED that:

- "(1) Authority is granted to make U.S. West's Advice Letter No. 8-A effective on March 8, 1989.
- "(2) The protests of Mission Bell and CRA are dismissed without prejudice.

"The effective date of this Resolution is today."

- "(i) The corporation or association must be legally organized for profit making purposes, and

"It should be clear from the above that U.S. West does not intend to make bulk rates available to members of so-called affinity groups like AAA, neighborhood associations, senior citizen groups, and similar community organizations. Rather, the offering is confined to for-profit entities, and to persons directly involved in the business of the entity."

On February 9, 1989, again in response to CRA complaints, the U.S. West attorney wrote staff reiterating that pursuant to Advice Letter 8-A, non-profit associations or loose affinity groups would not qualify as a "corporation or other legal entity."¹³

Resolution T-13052 followed these letters on March 8, 1989. The discussion in the "Opinion" portion of the Resolution reflects the fact that staff, in drafting the Resolution, heavily relied upon the content of the two explanatory letters from U.S. West's attorney. Clearly staff intended to incorporate the

13 The second full paragraph on page 2 of the attorney's February 9, 1989 letter states:

"What remains is a relatively simple question, which is whether Advice Letter 8A, as worded, permits service to be offered 'indiscriminately to unaffiliated groups.' The exact opposite is the case. The Advice Letter provides reduced rates to multiple units where (a) a single individual or entity has guaranteed the underlying bill, or (b) where a 'corporation or other legal entity' has fulfilled various requirements relating to promoting the utility's service. End users must be employees, officers or have a similar legal tie to the entity, and must be engaged in a for-profit basis in the entity's main line of business. Unaffiliated individuals would not qualify as a 'corporation or other legal entity'. Nor would a non-profit association or loose 'affinity group'."

explanatory language from the letters with regard to exclusion of non-profit entities, however ineffective and unartful the result. After issuance of the Resolution U.S. West took no steps to bring to staff's attention any "mistake" or inconsistency between the clearly intended effect of the Resolution and the actual language of the Advice Letter.

It was only many months later, and after CRA's October 11, 1989 request for Commission investigation and enforcement proceedings against U.S. West with regard to offerings to the BIA, a non-profit entity, that U.S. West's new attorney in a November 1, 1989 letter to staff characterized the inconsistency as a mere "mistake," derogating the Resolution, and asking that CRA's request be disregarded. The attorney admitted U.S. West had been providing multiple rate discounts to a non-profit association, despite the Resolution's discussion statements disallowing that, but defended its actions on the basis the utility was not violating its tariff. In a footnote in that November 1, 1989 letter, U.S. West apologized for any confusion its prior characterization in the December 19, 1988 letter may have caused, stating that its counsel's statement was mistaken. It also conceded that "this mistake in the body of the resolution" may have stemmed from its counsel's mistaken statement in the December 19, 1988 letter. But this exculpatory effort does not mention U.S. West's persistence in deluding the staff on the same matter in its February 9, 1989 letter wherein counsel reiterated its exclusionary statements.

This type of sharp dealing has no place in Commission practice and will not be countenanced. Rule 1 of this Commission's Rules of Practice and Procedure speaks to ethics, and provides in relevant part that by transacting business with the Commission, a party agrees "never to mislead the Commission or its staff by an artifice or false statement of fact or law." U.S. West, by its attorney's letters of December 19, 1988 and February 9, 1989, misled the Commission and its staff, leading to the approval of

Resolution T-13052 approving Advice Letter 8-A. U.S. West took full advantage of the "mistake" it had implanted, and by failing within a reasonable time after March 8, 1989 to bring this "mistake" and the resulting language ambiguity to the attention of the Commission, persisted in further sharp dealing to its competitive advantage and profit in the cellular marketplace.

Each of these three instances of sharp dealing - the two separate letters from U.S. West's counsel which engendered the Resolution approving Advice Letter 8-A, and the continued implementation of the provisions of the Advice Letter without bringing the "mistake" and resulting ambiguity to the attention of the Commission for corrective steps or modification - constitute separate and distinct violations of Rule 1 of our Rules of Practice and Procedure. Each is subject to imposition of a penalty.¹⁴ In consideration of U.S. West's persistence in pressing the assertions of for-profit requirements for an aggregating entity, which "mistake" was incorporated into the Opinion language of Resolution T-13052, and its taking of every advantage of the "mistake" and resulting ambiguity in the marketplace while remaining silent after issuance of Resolution T-13052, we conclude that the maximum penalty of \$2,000 permitted for each violation of Rule 1 requiring that parties never mislead the Commission by an

14 PU Code § 2107 provides, in relevant part, that: "Any public utility...which fails or neglects to comply with any part or provision of any...rule...of the Commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) for each offense." "Every violation...of any part of any...rule...of the Commission, by any corporation or person is a separate and distinct offense..." (PU Code § 2108.) "In construing and enforcing the provisions of this part relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of his official duties or employment, shall in every case be the act, omission, or failure of such public utility." (PU Code § 2109.)

artifice or false statement of fact or law is appropriate and should be imposed.

The General Counsel of the Commission will be ordered to bring and prosecute to final judgment an action to recover this \$6,000 in the name of the people of the State of California in Superior Court in San Diego County, as provided by PU Code § 2104.

We next turn to the Cease and Desist Order instituted by D.90-04-030 issued on April 11, 1990. This order provided that U.S. West cease and desist effective that date from offering or providing multiple rate discounts to end-users where the aggregating entity is a non-profit entity. Customers receiving multiple unit discounts as of that date through association with non-profit entities were grandfathered to preserve the status quo until the issues would be addressed and resolved in I.88-11-040.

On June 6, 1990, the Commission issued its interim order, D.90-06-025 in I.88-11-040. In this interim order the Commission again recognized that facilities-based carriers enjoy economies of scale from volume usage, and concluded that a form of wholesale rates should be afforded to those corporate or other legal entities, irrespective of characteristics, affinity, or professional affiliation, who contribute to volume usage and offer cellular service to a restricted group of end-users. The Commission determined to end any distinctions that have developed between "bulk users" and "large users" in favor of a more pro-competitive policy of requiring carriers to offer only one tariff to be applicable to all corporate or other legal entity volume purchasers if there is a demand for such service within the SMSA.

To qualify for this volume tariff a corporate or other legally organized aggregating entity, without regard to for-profit, non-profit, affinity, or professional affiliation distinctions, must serve as the master customer for its employees, officers, contract agents, or members, bill and collect from these individual end-users, guarantee payment for all usage by its end-users, and

not apply any additional charges to these end-users for such service. The volume tariff rates must be set at least five percent (5%) above the rates the duopoly carriers charge resellers, thereby enhancing competition by providing resellers opportunity to compete for volume purchaser business. The 5% margin must not affect any rate offered by a carrier to a government agency. In addition, we require that these volume purchaser tariffs contain the following consumer protection provisions to apply when volume services are purchased by other than certificated resellers or carriers. The volume purchaser must notify individual subscribers that:

1. It is not a public utility.
2. The Commission will not resolve disputes between the volume purchaser and its individual subscribers.
3. Small Claims Court and other similar forums are available to resolve disputes if necessary.
4. The service is provided under a volume purchaser tariff from a utility and all service may be discontinued if the volume purchaser does not pay its bills.
5. The volume purchaser is not permitted to mark up the service billed by the utility or charge special cellular service fees of any kind.

Notice must be provided in writing to individual subscribers of the volume purchaser at the commencement of service, and an additional copy of this notice must be provided at least twice a year to each individual subscriber by the volume purchaser.

By March 1, 1991, U.S. West will be required to submit an Advice Letter modifying its tariffs, insofar as such pertain to all volume purchasers other than certificated resellers, to conform to the requirements of the last paragraph. Upon approval of its Advice Letter U.S. West will inform all volume purchasers of its modified tariff requirements. Those volume purchasers temporarily

grandfathered under the Cease and Desist Order of D.90-04-030 issued April 11, 1990, will be afforded 30 days' opportunity after the approval date to either retain U.S. West service under the modified tariff provisions or to transfer to any certificated reseller. Within 30 days of the date its Advice Letter is approved, all U.S. West volume purchaser service to other than certificated resellers will be required to conform to the requirements of the modified tariff.

The Cease and Desist Order of D.90-04-030 will be vacated 30 days after the date U.S. West's Advice Letter conforming its tariffs to the requirements herein is approved.

While counsel for CRA's action in revealing names in the Schena document do not rise to the gravity of the sharp dealing for which we fine U.S. West, it is of similar character and is not appreciated by the Commission.

We are aware that there are now petitions for clarification or modifications to D.90-06-025 before the Commission. We are also aware that the instant proceeding, while an investigation, has its scope, as indicated during the PHC held April 5, 1990, essentially limited to volume purchaser issues and asserted transgressions as these pertain to U.S. West. This proceeding is not a generic proceeding. Accordingly, any substantive clarification or modification of D.90-06-025 other than as such pertain to U.S. West must await proceedings in I.88-11-040.

The investigation instituted by I.90-01-013 should be closed.

Findings of Fact

1. U.S. West, the non-wireline-facilities based duopoly cellular carrier in the San Diego SMSA, operates under authority granted by this Commission in the exercise of our regulatory authority over this class of communication utilities.

2. The Commission has determined that large organizations who purchase volume cellular services for their own use involving an identified group of end-users enable duopoly carriers to achieve economies of scale, and the Commission accordingly has authorized duopoly carriers to implement forms of wholesale tariffs in order that such benefits of scale may be passed through to end-users.

3. Through previous successive Advice Letter filings, U.S. West has received authorization to include certain volume purchaser rates in its tariffs.

4. In 1988 CRA complained that U.S. West in violation of its tariffs was offering "illegal, anticompetitive and misleading" promotions by offering wholesale rates to "groups of unrelated individuals."

5. In an attempt to clarify the circumstances of its offerings in response to the complaints, U.S. West filed Advice Letter 8, superseded by Advice Letter 8-A.

6. CRA and a cellular reseller customer protested the U.S. West Advice Letter filing, asserting inability of resellers to compete, and charged U.S. West with open-ended offerings to individuals with minimal affiliation to the aggregating entity.

7. On December 19, 1988, U.S. West's counsel wrote denying the accusations, and stated therein that U.S. West did not make bulk rates available to members of just any affinity group - that the group must be one organized for "profit-making purposes."

8. On February 8, 1989, U.S. West's counsel again wrote the Commission, reiterating the utility's intention and position, asserting that non-profit associations or loose affinity groups

would not qualify under Advice Letter 8-A as a "corporate or legal entity."

9. On March 8 1989, in reliance upon U.S. West's assertions, the Commission issued Resolution T-13052 authorizing U.S. West to make Advice Letter 8-A effective.

10. In the Background and Discussion portions of Resolution T-13052, the "Opinion" part of the Resolution, the Commission detailed its intention that any aggregating entity through which discounted rates would flow under U.S. West's Advice Letter 8-A would have to be an entity organized for profit-making purposes, and clearly indicated the Commission's reliance upon U.S. West's assertions to that effect.

11. In the "Findings" part of Resolution T-13052, the Commission - without further comment or limitation - stated that the terms and conditions proposed in the Advice Letter were "appropriate and reasonable, and in the "Order" part of the Resolution, the Commission, while dismissing the protests, merely stated that authority was granted to make the Advice Letter effective on March 8, 1989, without modification.

12. The revised Cal. P.U.C. Sheets Nos. 151-T and 152-T approved through Advice Letter 8-A merely require that "The Eligible Persons are engaged on a for-profit basis in the entity's main line of business," with no requirement that the entity be a "for-profit" entity.

13. In offering and providing multiple unit tariff rates to non-profit aggregating entities, U.S. West followed the as-submitted provisions of its Advice Letter 8-A which were authorized to become effective by the order in Resolution T-13052.

14. On October 11, 1989, CRA requested investigation and enforcement proceedings against U.S. West, alleging that in offering multiple unit tariff rates to a non-profit affinity group, the BIA, U.S. West violated both Resolution T-13052 and its own tariff.

15. On January 9, 1990, U.S. West filed Advice Letter 24 by which it sought to remove the "ambiguity" between the language in the "Opinion" portion of Resolution T-13052 and its tariff, and to clarify its tariff.

16. On January 9, 1990, the Commission initiated I.90-01-013.

17. At a PHC held April 5, 1990 U.S. West readily stipulated that it had offered and provided multiple unit tariff rates to the building association as well as to other non-profit entities, but contended that these actions did not violate its tariff; that there were no tariff requirements that the aggregating entity be a non-profit entity; only that the Eligible Persons be engaged on a for-profit basis in the entities' main line of business.

18. As to Resolution T-13052, U.S. West concedes that the limiting language in the "Opinion" portion of the Resolution (with regard to the stated requirement that an aggregating entity should itself be organized for profit-making purposes) "may stem from correspondence from counsel for U.S. West...", but argues that counsel was mistaken, and while apologizing for any confusion this characterization may have caused, states that the plain meaning of the tariff remains clear and was followed.

19. In the PHC the parties acceded to the ALJ's proposal that further hearing would not be necessary: that in recognition of a pending decision in the generic investigation into regulation of cellular radiotelephone utilities, I.88-11-040, U.S. West would immediately withdraw Advice Letter 24; that a Cease and Desist Order would issue from the Commission for U.S. West to cease further offerings to non-profit entities while grandfathering then existing services, thereby preserving the status quo pending indication in the generic proceeding of Commission intentions; that U.S. West would furnish coded information indicating the extent of existing U.S. West's non-profit entity service with the understanding that following briefing on possible sanctions, fines must be imposed if violations were determined.

20. On April 11, 1990, by D.90-04-030 the Commission ordered U.S. West to cease and desist from offering or providing multiple rate discounts to end-users where the aggregating entity is a non-profit entity. End-users then receiving service were grandfathered pending resolution of the issue in I.88-11-040.

21. On April 12, 1990, in compliance with the ALJ's order, U.S. West submitted under seal coded information listing the aggregate number of cellular units categorized by types of non-profit organizations.

22. On April 5, 1990, U.S. West withdrew Advice Letter 24.

23. The repeated assertions of U.S. West to the Commission alleging a requirement in Advice Letter 8-A that aggregating entities to be eligible for multiple unit rates for cellular service had to be "for-profit" entities, were false statements which misled the Commission to issue Resolution T-13052 containing ambiguous language.

24. By failing to bring to the attention of the Commission the ambiguity between the language in Resolution T-13052 derived from its false statements, and Advice Letter 8-A, while taking competitive advantage and profit from the ambiguity, U.S. West continued for months after issuance of the Resolution to mislead the Commission.

25. Each communication by U.S. West to the Commission - the December 9, 1988 letter and the February 8, 1989

letter, and the fact of U.S. West's continual failure for months to bring the ambiguity language in Resolution T-13052 which it engendered to the attention of the Commission, constitute distinct and separate instances of U.S. West misleading the Commission in violation of Rule 1 of the Commission's Rules of Practice and Procedure.

26. For each of its three violations of Rule 1 of the Commission's Rules of Practice and Procedure U.S. West should be subject to the maximum penalty permitted by PU Code § 2107.

27. By D.90-06-025, an interim decision issued June 6, 1990 in I.88-11-040, the Commission concluded that in the interest of developing a pro-competitive policy that offers the ability to make available margins from buying in bulk and reselling individually, a form of wholesale rates without distinction between "bulk users" and "large users" should be afforded to legal entities irrespective of characteristics, affinity, or professional affiliation, who contribute to volume usage and offer cellular service to a restricted group of end-users, and set forth qualifications for such volume tariffs.

28. U.S. West should be required by March 1, 1991 to submit an Advice Letter to modify its existing tariffs to conform to the single wholesale volume tariff qualifications set forth in D.90-06-025.

29. U.S. West should be required to inform all its present volume producers, including those "grandfathered" temporarily under the Cease and Desist Order of D.90-04-030, of a 30-day reconsideration window, after approval of its Advice Letter, during which purchasers may either retain U.S. West service under the modified tariff provisions or seek transfer to any certificated reseller or cancellation of service without penalty.

30. Within 30 days of the approval of a U.S. West's Advice Letter modifying its tariffs, all U.S. West volume purchaser

service to other than certificated resellers should conform to the modified tariffs.

31. The Cease and Desist Order of D.90-04-030 should vacate 30 days after U.S. West's Advice Letter conforming its tariffs is approved.

32. CRA filed no request for finding of eligibility for compensation for its role in this proceeding.

33. Motions not granted during this proceeding or on brief should be deemed denied by the ALJ.

34. The investigation initiated by I.90-01-013 should be closed.

Conclusions of Law

1. U.S. West is a cellular radiotelephone telecommunications public utility subject to the jurisdiction of this Commission.

2. Commission resolutions are Commission decisions with the same force and effect as any other Commission decision (Conclusion of Law 6, Stanislaus Food Products Co. v PG&E (1979) 2 CPUC 2d 304, 308, 310).

3. The ordering paragraph of Resolution T-13052 issued on March 8, 1989 authorized U.S. West's Advice Letter 8-A to be effective on that date and dismissed the protests, serving thereby only to make the tariff terms contained in the Advice Letter as originally submitted effective, and to effectuate the dismissal of the protests.

4. In offering and providing multiple unit tariff rates to non-profit aggregating entities, following Commission Resolution T-13052 approval of Advice Letter 8-A, U.S. West violated neither the Advice Letter nor Resolution T-13052.

5. The successive attempts of U.S. West to mislead the Commission and its staff by false statement on material facts inducing and leading to Resolution T-13052 authorizing U.S. West's Advice Letter 8-A were violations of Rule 1 of the Commission's Rules of Practice and Procedure.

6. The protracted delay by U.S. West in bringing the language ambiguity between Resolution T-13052 and Advice Letter 8-A to the attention of the Commission, while taking competitive advantage and profit from its delay, constituted an artifice further misleading the Commission in violation of Rule 1 of the Commission's Rules of Practice and Procedure.

7. PU Code § 2107 provides penalties for public utilities which violate any rule of the Commission.

8. U.S. West should modify its tariffs to meet the volume purchaser requirements of D.90-06-025, and should require all such purchasers, except certificated cellular resellers, to conform.

9. Volume purchasers under the cease and desist provisions of D.90-04-030 should have opportunity to transfer or cancel.

10. No filing having been made by CRA for a finding of eligibility for compensation, consideration of eligibility, or of an award of legal fees or costs, is unnecessary.

ORDER

IT IS ORDERED that:

1. If U.S. West Cellular of California, Inc. (U.S. West) wishes to offer and provide, or continue to offer and provide, multiple unit volume discounted rates through other than certificated resellers, U.S. West by March 1, 1991 must submit to this Commission an Advice Letter filing proposing modification of its tariffs, insofar as these tariffs pertain to all volume purchasers other than certificated resellers. Such an Advice Letter filing must provide for offering and provision of multiple unit cellular service to any corporate or other legally organized aggregating entity without regard to such entity's profit or non-profit status, affinity, or professional affiliation distinctions. Such aggregating entity must contract to and serve as the master customer for its employees, officers, contract agents, or members,

bill and collect from these individual end-users, guarantee payment for all usage by its end-users, and not apply any additional charges to these end-users for these services. The volume tariff rates must be set at least five percent (5%) above the rates U.S. West charges certified resellers, but must not affect any rate offered to a governmental agency. In addition, these volume purchaser tariffs applicable to other than certificated resellers must contain the following consumer protection provisions requiring the volume purchaser to notify individual subscribers that:

- a. The volume purchaser entity is not a public utility.
- b. The Commission will not resolve disputes between the volume purchaser entity and its individual subscribers.
- c. Individual subscribers must look to Small Claims Court and similar forums to resolve disputes.
- d. The service is provided under a volume purchaser tariff from a utility and all services may be discontinued if the volume purchaser does not pay its bills to U.S. West.
- e. The volume purchaser is not permitted to mark up the service billed by U.S. West or to charge special cellular service fees of any kind.

This notice must be provided by the volume purchaser entity in written form at the commencement of service to each individual subscriber, and additionally at least twice a year thereafter while served.

2. Upon acceptance or approval by the Commission of the Advice Letter proposing to modify tariffs required by Ordering Paragraph 1, U.S. West shall immediately inform all its volume purchaser entities, including those grandfathered under the cease and desist provisions of D.90-04-030, of these accepted or approved modified tariff requirements.

3. Volume purchaser entities temporarily grandfathered under the Cease and Desist Order provisions of D.90-04-030 will be afforded 30 days' opportunity after the effective date of the acceptance or approval of the modified tariff requirements to either retain U.S. West service under the modified tariff requirements set forth in Ordering Paragraph 1, or transfer to a certificated reseller without termination penalties or charges.

4. Within 30 days after the acceptance or approval by the Commission of U.S. West's Advice Letter modifying its tariffs to conform as set forth in Ordering Paragraph 1 herein, all U.S. West volume purchaser service to other than certificated resellers shall conform to the modified tariffs.

5. The cease and desist provisions of D.90-04-030 shall vacate 30 days after the effective date of the acceptance or approval of the Commission of U.S. West's Advice Letter.

6. U.S. West shall be subject to the maximum penalty of two thousand dollars (\$2,000), as provided by PU Code § 2107, for each of its three failures to comply with the provisions of Rule 1 of the Commission's Rules of Practice and Procedure, for an aggregate penalty of six thousand dollars (\$6,000).

7. Unless paid voluntarily within 45 days of the effective date of this order, the General Counsel of this Commission is ordered to bring and prosecute to final judgment an action to

recover this \$6,000 in the name of the people of the State of California in Superior Court in San Diego County.

8. Cellular Resellers Associations, Inc. is awarded no compensation for its role in this proceeding.

9. I.90-01-013 is closed.

This order becomes effective 30 days from today.

Dated December 6, 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

CELLULAR RADIO TELECOMMUNICATIONS SERVICE

(Continued)

SPECIAL CONDITIONS - RETAIL (Continued)

6. Privacy

The Company will provide new retail end users with a brief statement explaining that by its nature, cellular technology cannot always assure conversational privacy. These subscribers will also receive a sticker to be affixed to their mobile units requesting in substance that parties to cellular conversations be informed of the possibility that cellular conversations may not be completely private.

7. Services to Multiple Units

The reduced rates for service to multiple units are available under the following circumstances:

a) Any individual or entity which agrees to be separately liable for all tariffed charges for two or more identified cellular units will be eligible for multiple unit rates.

b) Any corporation or other legal entity will qualify for multiple unit rates for cellular service delivered to units held by employees, officers, contract agents, and members ("Eligible Persons") where (i) the Eligible Persons are engaged on a for-profit basis in the entity's main line of business; and where (ii) the individuals or entities responsible for payment have complied with Carrier's tariffs regarding credit and deposits; and where (iii) the organization has verified the status of the employees, officers, contract agents, and eligible members receiving the benefits of multiple unit rates; and (iv) where the organization has agreed to:

- Publicly endorse Carrier as the organization's preferred source of cellular service in the San Diego CGSA; or to
- Provide advertising space in organizational mailers, bulletins, newsletters, and the like; or to
- Allow Carrier to introduce and describe its service at employee and/or membership meetings.

Advice Letter No. 8A

Decision No. _____

Issued by

Jennifer Pomeroy

NAME

General Manager

TITLE

Date Filed NOV 07 198

Effective MAR 08 198

Resolution No. T13052

CELLULAR RADIO TELECOMMUNICATIONS SERVICE

(Continued)

SPECIAL CONDITIONS - RETAIL (Continued)

c) Where an individual or other legal entity has qualified for multiple unit rates, separate bills may be sent to each employee, officer, contract agent and/or eligible member receiving service. However, for purposes of determining applicable rates, the number of units of all employees, officers, contract agents, and eligible members in the same legal entity will be aggregated.

(N)

(N)

Issued by

Advice Letter No. 8A

Jennifer Pomaroy

Date Filed NOV 07

Decision No. _____
(END OF APPENDIX A)

NAME

Effective MAR 03 1989

General Manager

TITLE

Resolution No. T1 305

ATTACHMENT 7

CPUC Decision, 91-12-002

mailed

DEC 4 1991

Decision 91-12-002 December 4, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Cellular Resellers Association, Inc.,)

Complainant,)

v.)

Los Angeles Cellular Telephone)
Company (U-4007-C),)

Defendant.)

Case 90-11-053
(Filed November 30, 1990)

And Related Matters.)

Case 90-11-054
(Filed November 30, 1990)

Case 90-12-047
(Filed December 14, 1990)

Peter A. Casciato, Attorney at Law,
for Cellular Resellers Association,
Inc., complainant.

Dinkelspiel, Donovan & Reder, by David M.
Wilson, Attorney at Law, for Los
Angeles Cellular Telephone Company,
defendant.

O P I N I O N

Background

On November 23, 1988, an investigation into the regulation of cellular radiotelephone utilities was opened to determine whether the regulatory framework established in the early cellular certification proceedings is meeting the Commission's cellular objectives.

Pursuant to the investigation, Decision (D.) 90-06-025 and D.90-10-047 were issued which, among other matters, require cellular carriers to implement a large-user tariff at rates 5% above the wholesale rates charged certificated resellers. In addition, the cellular carriers are required to state in their tariffs that the organization or entity receiving volume-user rates